

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Revocation of the Family Child Care License of Geneve Marshall and Emmelyn Johnson	<b>FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION</b>
---	---

This matter comes before Administrative Law Judge Eric L. Lipman following a hearing pursuant to the license holders' appeal from an Order of Revocation of their license to provide family child care. The hearing in this matter was held on August 9, 2007 at the Office of Administrative Hearings. The record in this matter closed on August 9, 2007.

Mary M. Lynch, Assistant Hennepin County Attorney, 525 Portland Avenue South, 12<sup>th</sup> floor, Minneapolis, Minnesota 55415, appeared on behalf of Hennepin County Health and Human Services and the Minnesota Department of Human Services. Geneve Marshall and Emmelyn Johnson, 7944 Idaho Circle North, Minneapolis, Minnesota, 55445-2617 appeared on behalf of themselves.

**STATEMENT OF ISSUES**

1. Did Hennepin County and the Minnesota Department of Human Services demonstrate reasonable cause to show that Appellants' family child care license should be revoked?

2. If Hennepin County and the Minnesota Department of Human Services demonstrated reasonable cause to show that Appellants' family child care license should be revoked, did Appellants show, by a preponderance of the evidence, that revocation was not warranted?<sup>1</sup>

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

---

<sup>1</sup> Compare, Minn. Stat. § 245A.08 (3) (2006).

## FINDINGS OF FACT

1. Appellants were licensed by Hennepin County and the Department of Human Services to operate a family child care beginning in February of 2005.<sup>2</sup> The C-3 license permitted care for a maximum of 4 children under 24 months of age.<sup>3</sup>

2. On January 18, 2006, following a re-licensing visit, Hennepin County issued a Correction Order that cited a number of licensing violations at Appellants' child care home. Among the defects cited at the home were:

- (a) exceeding the age distribution limits of their license, by having three infants and two toddlers under care;
- (b) failing to ensure that caregivers received required training on reducing the risks of shaken baby syndrome prior to caring for infants;
- (c) failing to ensure that a helper received training on reducing the risk of sudden infant death syndrome prior to working with an infant; and,
- (d) maintaining incomplete files on children in care.<sup>4</sup>

3. On February 7, 2007,<sup>5</sup> during a re-licensing visit to Appellants' child care home, the Hennepin County licensing worker observed the following licensing violations:

### Supervision Issues:

- (a) A child was left alone, and unsecured, in a high chair while Emmelyn Johnson was on a lower level of the day care home with other children.<sup>6</sup>
- (b) The facility exceeded the age distribution limits of their license, by having three infants and two toddlers under care.

---

<sup>2</sup> Hearing Exhibit 1 at 9.

<sup>3</sup> *Compare*, Ex. 1 at 6 with Minn. R. 9502.0367 (C)(3) (2007).

<sup>4</sup> Ex. 1 at 9.

<sup>5</sup> Ex. 6 at 1-4.

<sup>6</sup> *Compare*, Minn. R. 9502.0315 (29a) (2007).

Physical Plant of the Facility:

- (c) Two cribs that were accessible to children in the day care home were unsafe.
- (d) A New Delta Crib had peeling paint and a second crib's mattress was placed so that the distance between the top of the mattress and the crib rail was 4.5 inches less than required.<sup>7</sup>
- (e) Gates or other barriers were not used as required when children between the ages of 6 to 18 months were under care. No gates were present on any stairways. The gates offered by the Appellants for use on that day were broken, did not fit the openings or were otherwise unsuitable. Specifically, gates were not placed at the stairway leading to the unlicensed upper level of the day care home, at the top of the stairways leading from the main level to the lower levels of the daycare home, at the first lower level to the main level; from the bottom of the stairway to the first lower level; and to the stairway for the infant-toddler room. In addition, there was no gate from the top of the exterior stairway from the basement exit door.<sup>8</sup>
- (f) Instead of a gate, as required by the rule,<sup>9</sup> the top of the exterior stairway was blocked by a large folding table on a snow-covered sidewalk.
- (g) The exit door from the lower level was blocked by toys.<sup>10</sup>
- (h) A number of hazards and toxins were accessible to children in the day care home, including hygiene products in the upper-level bathroom, as well as supplies in the day care office on the upper level. Because no gate barred access to these areas, the children under care had access to these items. Similarly, because of inadequate precautions and child-proofing, the children under care had unrestricted access to cupboards, drawers and rooms of the house that

---

<sup>7</sup> Compare, Minn. Stat. § 245A.146 (4)(a)(6) (2006).

<sup>8</sup> Compare, Minn. R. 9502.0425 (10)(C) (2007).

<sup>9</sup> *Id.*

<sup>10</sup> Compare, Minn. R. 9502.0425 (4) (2007).

contained potential hazards (scissors, nails, screws, cleanser, plastic bags, shampoo).<sup>11</sup>

- (i) Both the kitchen, and the lower level bathroom, that were used in the day care had uncovered garbage containers.<sup>12</sup>
- (j) Electrical outlets on the wall next to the diaper changing table in the lowest level of the day care home and under the desk in the dining room were missing covers.<sup>13</sup>
- (k) There was no tool to unlock the bathroom door.<sup>14</sup>
- (l) Two smoke detectors were beeping, indicating low batteries.<sup>15</sup>
- (m) There were no batteries for the radio and flashlight required by rule.<sup>16</sup>
- (n) Combustibles, including carpet and a furnace filter box, were placed within 26 inches of the furnace.<sup>17</sup>

Personnel and Documentation:

- (o) A helper in the child care home had been working there since October 2006 without the required background study.<sup>18</sup>
- (p) Emmelyn Johnson had no car seat restraint certificate.<sup>19</sup>
- (q) Fire drill logs and storm plans for 2006 were missing from the files.<sup>20</sup>
- (r) There was no physician's statement for employee Antonette Whitfield.<sup>21</sup>

---

<sup>11</sup> Compare, Minn. R. 9502.0435 (4) and (6) (2007).

<sup>12</sup> Compare, Minn. R. 9502.0435 (3) (2007).

<sup>13</sup> Compare, Minn. R. 9502.0425 (18)(A) (2007).

<sup>14</sup> Compare, Minn. R. 9502.0425 (12)(B) (2007).

<sup>15</sup> Compare, Minn. R. 9502.0425 (17) (2007).

<sup>16</sup> Compare, Minn. R. 9502.0435 (8)(E) (2007).

<sup>17</sup> Compare, Minn. R. 9502.0425 (7)(C) (2007).

<sup>18</sup> Compare, Minn. Stat. § 245C.13 (2) (2006).

<sup>19</sup> Compare, Minn. Stat. § 245A.18 (2) (2006).

<sup>20</sup> Compare, Minn. R. 9502.0405 (3)(H) (2007).

<sup>21</sup> Compare, Minn. R. 9502.0355 (2)(B) (2007).

- (s) There were no grievance or child reporting forms for any of the children enrolled in the day care.<sup>22</sup>
- (t) There were no completed provider policies for K.M., J.M. and M.B.<sup>23</sup>
- (u) The required notification of lack of insurance was missing on the provider policies and admission and arrangement forms for I.O., G.A., S.D., K.U., O.J.A., D.T. and N.M.<sup>24</sup>
- (v) The files for G.A, S.D., K.U., O.J.A., D.T. and N.M. were missing authorization forms relating to the provision of emergency medical or dental care.<sup>25</sup>
- (w) The transportation form for G.A. had no parent signature.<sup>26</sup>
- (x) There was no Emergency Exit plan on file.<sup>27</sup>

4. A correction order for the above violations was issued on February 7, 2007 and Appellants were given a deadline of February 21, 2007 to return the correction order to the County and to document how and when each violation was corrected.<sup>28</sup>

5. Appellants returned the correction order to the County on February 22, 2007.<sup>29</sup>

6. On a subsequent visit, on February 22, 2007, County licensing workers observed continuing violations of the state health and safety licensing standards.<sup>30</sup> Additionally, the officials noted the following new violations:

Supervision Issues:

- (a) Emmelyn Johnson stated that the only children in care were on the main level of the home, when, in fact, an infant was sleeping on the lowest level of the home.

---

<sup>22</sup> Compare, Minn. Stat. § 245A.04 (1)(D) (2006).

<sup>23</sup> Compare, Minn. R. 9502.0405 (3) (2007).

<sup>24</sup> Compare, Minn. R. 9502.0355 (4)(B) (2007).

<sup>25</sup> Compare, Minn. R. 9502.0405 (4)(A)(4) (2007).

<sup>26</sup> Compare, Minn. R. 9502.0405 (4)(E) (2007).

<sup>27</sup> Compare, Minn. R. 9502.0435 (8)(F) (2007).

<sup>28</sup> Ex. 1 at 10.

<sup>29</sup> Ex. 1 at 10; Ex. 6.

<sup>30</sup> Ex. 1 at 11, Ex. 8 at 1-3.

- (b) An infant was left alone, 2 floors below where the provider was with other children, with a door closed on one of the levels and no monitoring device.<sup>31</sup>

Physical Plant of the Facility:

- (c) A new crib was incorrectly assembled and had plastic covering the mattress. This crib was located in a room used for child care where an infant was asleep in another crib.<sup>32</sup>
- (d) An infant was found sleeping in a crib that had not passed inspection and where the mattress support had not been lowered to meet the required standards.<sup>33</sup>

Personnel and Documentation:

- (e) No background study had been submitted to the County agency for Henry Cooper, who arrived during the inspection visit to transport a child.<sup>34</sup>
- (f) Henry Cooper had not signed a copy of the Alcohol and Drug Policy.<sup>35</sup>
- (g) No certificates were available to show that Henry Cooper had received training in SIDS, Shaken Baby Syndrome, or that he had viewed the Shaken Baby Syndrome video.<sup>36</sup>
- (h) No certificates were available to show that Henry Cooper had received training for Child Passenger Restraint Systems.<sup>37</sup>
- (i) Emmelyn Johnson knew only the first name of J., an infant child in her care.<sup>38</sup>
- (j) No enrollment documents were available for J.<sup>39</sup>

---

<sup>31</sup> *Compare*, Minn. R. 9502.0315 (29a) (2007).

<sup>32</sup> *Compare*, Minn. Stat. § 245A.146 (4) (2006); Minn. R. 9502.0415 (5)(B) (2007).

<sup>33</sup> *Id.*

<sup>34</sup> *Compare*, Minn. Stat. § 245A.04 (3) (2006).

<sup>35</sup> *Compare*, Minn. Stat. § 245A.04 (1)(C) (2006).

<sup>36</sup> *Compare*, Minn. Stat. §§ 245A.144 and 245A.1445 (2006).

<sup>37</sup> *Compare*, Minn. Stat. § 245A.18 (2) (2006).

<sup>38</sup> *Compare*, Minn. R. 9502.0405 (4)(A) (2007).

<sup>39</sup> *Compare*, Minn. R. 9502.0405 (3)(A) and (4) (2007).

- (k) The child care license was not posted.<sup>40</sup>
- (l) The correction orders dated January 18, 2006 and February 7, 2007 were not posted.<sup>41</sup>

7. A correction order for the above violations was issued on February 22, 2007 and Appellants were given a deadline of March 9, 2007 to return a signed version Correction Order to the County with documentation that the violations in the Notice had been corrected.<sup>42</sup>

8. Appellants returned the February 22 Correction Order on March 12, 2007.<sup>43</sup>

9. On March 20, 2007, during an unannounced visit to Appellants' family child care home, Hennepin County licensors observed a "closed" sign hung on a window near the door to the home. After knocking on the door and ringing the bell, the licensors were admitted to the home by Ms. Johnson. During their inspection of the home on that date,<sup>44</sup> the licensor found the following violations:

Supervision Issues:

- (a) Emmelyn Johnson, who was the sole caregiver at the time if the inspection, had 9 children (6 preschoolers, two toddlers and one infant) under her care. Because Ms. Johnson was the sole caregiver, the C-3 license in place limited her to caring for only 8 children under school age.<sup>45</sup>

Physical Plant of the Facility:

- (b) Gates or barriers were not used when children between the ages of 6 and 18 months were under care at the home, and the upper level, which was not approved for child care, was accessible to children in care.<sup>46</sup>
- (c) An infant was sleeping in a car seat rather than a crib.<sup>47</sup>

---

<sup>40</sup> Compare, Minn. R. 9502.0335 (10) (2007).

<sup>41</sup> Compare, Minn. Stat. § 245A.06 (8) (2006).

<sup>42</sup> Ex. 8.

<sup>43</sup> *Id.*

<sup>44</sup> Ex. 1 at 12.

<sup>45</sup> Compare, Minn. R. 9502.0367 (C)(3) (2007)

<sup>46</sup> Compare, Minn. R. 9502.0425 (10)(C) (2007).

<sup>47</sup> Compare, Minn. 9502.0425 (9) (2007).

- (d) A child was sleeping in a crib on a vinyl mattress with no bedding.<sup>48</sup>
- (e) One crib that was accessible to children, had protruding hardware, and both the crib and the mattress support were in an unsafe slanting position.<sup>49</sup>
- (f) Toxic substances, including a soiled diaper and dirty water in a sand and water table, were accessible to children in the day care home.<sup>50</sup>
- (g) Two smoke detectors were missing batteries.<sup>51</sup>
- (h) Hazardous materials, including garbage bags under a sink, a brass screw hook on a low shelf and pull cords for Venetian blinds, were accessible to children.<sup>52</sup>

Personnel and Documentation:

- (i) The Correction orders dated January 18, 2006, February 7, 2007 and February 22, 2007 were not posted.<sup>53</sup>
- (j) The child care license was not posted.<sup>54</sup>
- (k) Information required by rule was missing from day care records; including, the names of the parents of children under care, contact information for parents of children under care, provider's policies, permission to transport children, permission to obtain emergency medical or dental care, immunization records and admission forms.<sup>55</sup>

10. On March 22, 2007, Hennepin County formally requested that the Department of Human Services revoke Appellants' license to provide group family child care.<sup>56</sup>

---

<sup>48</sup> *Id*; see also, Minn. 9502.0435 (11) (2007).

<sup>49</sup> *Compare*, Minn. Stat. § 245A.146 (4) (2006).

<sup>50</sup> *Compare*, Minn. R. 9502.0435 (4) (2007).

<sup>51</sup> *Compare*, Minn. R. 9502.0425 (17) (2007).

<sup>52</sup> *Compare*, Minn. R. 9502.0435 (6) (2007).

<sup>53</sup> *Compare*, Minn. Stat. § 245A.06 (8) (2006)

<sup>54</sup> *Compare*, Minn. R. 9502.0335 (10) (2007).

<sup>55</sup> *Compare*, Minn. R. 9502.0405 (4) (2007)

<sup>56</sup> Ex. 9.



11. On April 17, 2007, the Minnesota Department of Human Services issued an Order of Revocation revoking Appellants' license to provide group family child care based on the serious nature and chronicity of the licensing violations.

12. The Department of Human Services received Appellants' appeal of the Order of Revocation on or about May 15, 2007.<sup>57</sup>

## CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 245A.08.

2. The Notice of Hearing is proper in all respects and the Local Agency and the Department complied with all substantive and procedural requirements of law and rule.

3. At all times relevant to these proceedings, Appellants held a "C-3" group family child care license pursuant to Minn. R. 9502.0367 (C)(3).

4. The Commissioner is authorized by state law to suspend or revoke a license or impose a fine if the license holder "fails to comply fully with applicable laws or rules . . . ."<sup>58</sup> If the Commissioner finds that the license holder has not corrected the violations set forth in a correction order or conditional license, the Commissioner is authorized to impose a fine and order other licensing sanctions.<sup>59</sup> When imposing sanctions on a license holder, the Commissioner of Human Services is required to "consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program."<sup>60</sup>

5. The Commissioner of Human Services has adopted rules establishing procedures and standards for licensed child care providers "to ensure that minimum levels of care and service are given and the protection, proper care, health, safety, and development of the children are assured."<sup>61</sup>

6. The commissioner may issue a correction order to a license holder if the commissioner finds that the license holder has failed to comply with an applicable law or rule. The correction order "must state: (1) the conditions that constitute a violation of the law or rule; (2) the specific law or rule violated; [and]

---

<sup>57</sup> Notice of and Order for Hearing, Exhibit A.

<sup>58</sup> See, Minn. Stat. § 245A.07 (3) (2006).

<sup>59</sup> See, Minn. Stat. § 245A.06 (3) (2006).

<sup>60</sup> See, Minn. Stat. § 245A.07 (1) (2006).

<sup>61</sup> See, Minn. R. 9502.0325 (1) (2007); *see generally*, Minn. R. Chapter 9502.

(3) the time allowed to correct each violation . . . .” If a license holder fails to correct the violations specified in the correction order, the commission may . . . order . . . licensing sanctions pursuant to Minn. Stat. 245A.07.”<sup>62</sup>

7. At a hearing relating to the revocation of a family child care license, the Commissioner of Human Services may demonstrate reasonable cause for action taken by submitting statements, reports, or affidavits to substantiate the allegations that the license holders failed to comply fully with applicable law or rule. If the Commissioner demonstrates that reasonable cause existed, the burden of proof shifts to the license holders to demonstrate by a preponderance of the evidence that they were in full compliance with those laws and rules at the relevant times.<sup>63</sup>

### **Minimum Supervision Requirements:**

8. Licensing rules limit the total number of children and the number of preschoolers, toddlers, and infants who may be in care at any one time. A person who holds a Group Family Day Care C-3 License may have up to 14 children under school age in care. If two adults are present, no more than four of the children shall be infants and toddlers and of that total, no more than three shall be infants. If one adult and one helper are present, no more than one infant or toddler may be present. If there is only one caregiver present, no more than eight children under school age may be under care.<sup>64</sup>

9. The Department demonstrated reasonable cause for adverse action against the Appellants’ license by showing that the Appellants exceeded the total number of infants and toddlers permitted under their license on January 18, 2006 and on February 7, February 22 and March 20 of 2007. Appellants failed to show by a preponderance of the evidence that they were in full compliance with the applicable capacity requirements.

10. The supervision rules in a licensed child care facility require that a caregiver be “within sight or hearing of an infant, toddler or preschooler at all times so that the caregiver is capable of intervening to protect the health and safety of the child.”<sup>65</sup> The Department demonstrated reasonable cause for adverse action against the Appellants’ license by showing that Appellants failed to comply with this requirement when Ms. Johnson left a child alone, unsecured, and unsupervised in a high chair on February 7, 2007; and when Ms. Johnson left an infant alone, asleep, with no monitoring device, two levels below where Ms. Johnson was with other day care children on February 22, 2007. Appellants

---

<sup>62</sup> See, Minn. Stat. § 245A.06 (1) and (3) (2006).

<sup>63</sup> See, Minn. Stat. § 245A.08 (3)(a) (2006).

<sup>64</sup> See, Minn. R. 9502.0367 (C)(1) (2007).

<sup>65</sup> See, Minn. R. 9502.0315 (29a) (2007).

failed to show by a preponderance of the evidence that they were in full compliance with the applicable supervision requirements.

### **Health and Safety Requirements for Licensed Facilities:**

11. There are numerous licensing rules regarding the physical environment in a child care home, including, among others, requirements that:

- (a) combustible items must not be located within 36 inches of the furnace;
- (b) gates or barriers must be used when children between the ages of 6 and 18 months are present;
- (c) stairways must be free of clutter and obstructions;
- (d) bathroom door locks must be able to be opened from the outside, with the opening device readily accessible to all caregivers;
- (e) electric plugs that are accessible to children younger than first grade must be tamper-proof or shielded when not in use.<sup>66</sup>

12. The Department demonstrated reasonable cause for adverse action against the Appellants' license by establishing that on:

- (a) February 7, February 22 and March 20, 2007, gates or barriers were not used as required;
- (b) February 7, combustibles were found within 36 inches of the furnace;
- (c) February 7, the exit door from the lower level was blocked by toys;
- (d) February 7 and 22, the top of the exterior stairway was blocked by a large folding table;
- (e) February 7 and 22, a tool to unlock the bathroom door from the outside was not available; and,
- (f) February 7 and 22, electrical outlets next to the diaper changing table and in the dining room had no covers.

---

<sup>66</sup> See, Minn. R. 9502.0425 (4), (10) and (18) (2007).

Appellants failed to show by a preponderance of the evidence that they complied with these requirements.

13. The physical environment rules also require that the “furnace . . . area must be inaccessible to children” and that smoke detectors must be “properly installed and maintained on all levels.”<sup>67</sup> The Department demonstrated reasonable cause for adverse action against the Appellants’ license by showing that on February 7 and 22, the furnace room was unlocked and accessible to children and on February 7, 22 and March 20, two smoke detectors were beeping to indicate low batteries (February 7 and 22) or without batteries at all (March 20). Appellants failed to show by a preponderance of the evidence that they complied with these requirements.

14. The child care licensing rules require, at a minimum, that for each infant or newborn in care, the child care home have a crib, portable crib, or playpen with waterproof mattress or pad and that the infant or newborn be provided with such a safe, comfortable sleeping space.<sup>68</sup> The rules also require that each child be provided with clean, separate bedding.<sup>69</sup> The Department demonstrated reasonable cause for adverse action against the Appellants’ license by showing that, on February 22, 2007, an infant was found sleeping in an unsafe crib and on March 20, 2007, one infant was sleeping in a crib on a vinyl mattress with no bedding and another infant was sleeping in a car seat. Appellants failed to show by a preponderance of the evidence that they complied with these requirements.

#### **Personnel and Documentation Requirements for Facilities:**

15. All employees or volunteers who will have direct contact with children served by a licensed child care program are required to have a background study.<sup>70</sup> The Department demonstrated reasonable cause for adverse action against the Appellants’ license by showing that Appellants failed to comply with this requirement by employing Antonette Whitfield in the child care home starting in October of 2006, and by arranging for Henry Cooper to transport an infant in their care in February of 2007, without the required background studies. Appellants failed to show by a preponderance of the evidence that they complied with this requirement.

16. A child care license holder

[m]ust have a policy that prohibits license holders, employees . . . and volunteers, when directly responsible for persons served by the

---

<sup>67</sup> See, Minn. R. 9502.0425 (7)(E) and (17) (2007).

<sup>68</sup> See, Minn. R. 9502.0415 (5) and Minn. R. 9502.0425 (9) (2007).

<sup>69</sup> See, Minn. R. 9502.0435 (11) (2007).

<sup>70</sup> See, Minn. Stat. §§ 245C.03 (1) and 245C.04 (2006).

program, from . . .being in any manner under the influence of a chemical that impairs the individual's ability to provide services or care. The license holder must train employees. . . and volunteers about the program's drug and alcohol policy.<sup>71</sup>

The commissioner has a right to access to the physical plant where the licensed program is provided and to documents and persons served by the program as well as staff. The access must be provided without prior notice.<sup>72</sup> The Department demonstrated reasonable cause for adverse action against the Appellants' license by showing that Appellants failed to comply with this statute by arranging for Henry Cooper to transport an infant from their child care home when there was no evidence that Mr. Cooper had received the required drug and alcohol policy training. Appellants failed to show by a preponderance of the evidence that they complied with this requirement.

17. The licensing statutes require training for staff, caregivers and helpers at child care facilities to have training on sudden infant death syndrome (SIDS) and shaken baby syndrome. The Department demonstrated reasonable cause for adverse action against the Appellants' license by showing that Appellants failed to comply with this statute by arranging for Henry Cooper to transport an infant from their child care home when there was no evidence that Mr. Cooper had received the required training on sudden infant death syndrome (SIDS) and shaken baby syndrome. Appellants failed to show by a preponderance of the evidence that they complied with these requirements.

18. For staff, caregivers or helpers who transport children in a motor vehicle, training on the proper use and installation of child restraint systems is also required.<sup>73</sup> The Department demonstrated reasonable cause for adverse action against the Appellants' license by showing that Emmelyn Johnson had no car seat restraint certificate on file on February 7, 2007. Appellants failed to show by a preponderance of the evidence that they complied with these requirements.

19. Adult caregivers in a licensed child care home must demonstrate that they are physically able to care for children by having on file documentation to show that they have "had a physical examination from a licensed physician within 12 months prior to employment within the residence and are physically able to care for children."<sup>74</sup> The Department demonstrated reasonable cause for adverse action against the Appellants' license by showing that Appellants failed to comply with this rule by employing Antonette Whitfield in the child care home when there was no documentation of the required physical examination in her

---

<sup>71</sup> See, Minn. Stat. § 245A.04 (1)(c) (2006).

<sup>72</sup> See, Minn. Stat. § 245A.04 (5) (2006).

<sup>73</sup> See, Minn. Stat. § 245A.18 (2006).

<sup>74</sup> See, Minn. R. 9502.0355 (2)(B) (2007).

file. Appellants failed to show by a preponderance of the evidence that they complied with this requirement.

20. A license holder must perform safety inspections of every crib used by or that is accessible to any child in care, including documenting a dozen specific safety concerns. If an unsafe condition is found, the crib must be removed from use and made inaccessible to children. The inspections, and actions taken with unsafe cribs, must be documented and made available to the Department and to parents.<sup>75</sup> The Department demonstrated reasonable cause for adverse action against the Appellants' license by showing that Appellants failed to comply with this statute by using a crib with peeling paint, a crib with an unsafe mattress height and a crib that was incorrectly assembled during two visits in February, 2007. The Department also showed that Appellants continued to use unsafe cribs – and to permit them to be accessible to children – despite their condition and without documentation of the required inspections. Appellants failed to show by a preponderance of the evidence that they complied with the crib safety requirements.

21. If a child care provider does not have liability insurance coverage, that provider is required to so notify, in writing, the parents of all children in the provider's care prior to the child's admission into the child care. The provider is required to maintain copies of such notices signed by the parents indicating that they have read and understood the notice.<sup>76</sup> The Department demonstrated reasonable cause for adverse action against the Appellants' license by showing that Appellants failed to comply with this requirement when they determined that Appellants were unable to produce the signed notices during licensing visits. Appellants failed to show by a preponderance of the evidence that they complied with this requirement.

22. The child care licensing rules require that a child care provider "post the license in the residence in a prominent place."<sup>77</sup> The Department demonstrated reasonable cause for adverse action against the Appellants' license by showing that Appellants failed to comply with this rule by neglecting to post their child care license on February 22 and March 20, 2007. Appellants failed to show by a preponderance of the evidence that they complied with this requirement.

23. Minn. Stat. § 245A.06, subd. 8., requires that when a licensed family child care provider receives a correction order, the order must be posted in a conspicuous place for two years. The Department demonstrated reasonable cause for adverse action against the Appellants' license by showing that Appellants failed to comply with this statute on February 22 or March 20, 2007 by

---

<sup>75</sup> See, Minn. Stat. § 245A.146 (3) and (4) (2006).

<sup>76</sup> See, Minn. R. 9502.0355 (4)(B) and (C) (2007).

<sup>77</sup> See, Minn. R. 9502.0335 (10) (2007).

failing to post the January 18, 2006 correction order, or either of the February, 2007 correction orders. Appellants failed to show by a preponderance of the evidence that they complied with this requirement.

24. Providers are required to maintain on file certain written information available for discussion with parents or with the licensing agency. Among other things, required documents include “emergency, fire, and storm plans and the monthly fire drill log.” The Department demonstrated reasonable cause for adverse action against the Appellants’ license by showing that, on February 7, 2007, Appellants had no fire logs or storm plans for 2006, and no Emergency Exit plan on file. Appellants failed to show by a preponderance of the evidence that they complied with this requirement.

25. Records must be maintained by the provider for each child in care, including:

- (1) Name and birthdate of the child.
- (2) Full name of parents
- (3) Home address, work address, and telephone numbers where parents may be reached.
- (4) Name, address, and telephone number of physician, dentist, and hospital to be used for emergencies when parents cannot be reached.
- (5) Name, address, and telephone number of persons to be notified in case of emergency, when parents cannot be reached.
- (6) Names of all persons authorized to remove the child from the residence.
- (7) Enrollment dates.
- (8) Financial arrangements.
- (9) Insurance notification specified in part 9502.0335, subpart 4.

Other items required in the child’s file include special instructions from the parent, immunization records, signed consents for emergency medical care and written permission to transport children if applicable.<sup>78</sup> The Department demonstrated reasonable cause for adverse action against the Appellants’ license by showing that, on January 18, 2006, February 7, 22, and March 20, 2007, documentation required by rule was not available for review by inspectors. Appellants failed to

---

<sup>78</sup> See, Minn. R. 9502.0405 (4) (2007).

show by a preponderance of the evidence that they complied with this requirement.

26. Minn. Stat. § 245A.07, subd. 3 authorizes the commissioner to suspend or revoke a license if a license holder “knowingly withholds relevant information from or gives false or misleading information to the commissioner . . . during an investigation.” On February 22, 2007, Appellant Emmelyn Johnson stated that the only children in care were on the main level of the home, when, in fact, an infant was sleeping on the lowest level of the home.

27. The Department demonstrated reasonable cause for adverse action against the Appellants’ license, on the grounds that the licensee provided false information to County investigators. In reply, Appellant Emmelyn Johnson testified credibly that the information she relayed to inspectors was in error, but was not an intentional deception. As detailed below, it is recommended that the Department not base regulatory discipline upon this ground.

28. Before the commissioner revokes a license, the commissioner must perform an evaluation which considers “facts, conditions, or circumstances concerning the program’s operation, the well-being of persons served by the program . . . and information about the qualifications of the personnel employed by the . . . license holder” and “determine whether a risk of harm to the persons served by the program exists.”<sup>79</sup>

29. Appellants have a history of chronic violations of licensing statutes and rules, some of which are severe, and many of which create a risk of harm to the children served by the program.

30. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions.

31. The Memorandum that follows explains the reasons for these Conclusions, and the Administrative Law Judge therefore incorporates that Memorandum into these Conclusions.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

---

<sup>79</sup> See, Minn. Stat. § 245A.04 (6) (2006).



## **RECOMMENDATION**

IT IS RECOMMENDED that the Commissioner of the Department of Human Services AFFIRM the decision to revoke the group family child care license of Geneve Marshall and Emmelyn Johnson. The Protective Order entered in this matter shall remain in effect.

Dated: November 2, 2007

s/Eric L. Lipman  
\_\_\_\_\_  
ERIC L. LIPMAN  
Administrative Law Judge

Reported: Digitally recorded - No Transcript Prepared

## **NOTICE**

This report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Cal Ludeman, Commissioner of Human Services, Box 64998, St. Paul MN 55155, (651) 431-2907 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Pursuant to Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

## MEMORANDUM

The Department demonstrated that Appellants' history, from the time of their first re-licensing visit, to the issuance of the Revocation Order, has involved a pyramiding series of violations of the licensing statutes and rules.

Worse still, by February of 2007, these violations had escalated from a series of technical defaults to far more serious breaches, involving the health and safety of children under care. Of the more than twenty-five violations cited during the February 7, 2007 inspection visit, most remained unaddressed during the February 22, 2007 follow-up inspection. And with each inspection visit, new and serious defects were discovered. These continuing violations establish a pattern of chronicity.

Appellants offered evidence relating to their participation in a federal food and nutrition program, and of their attempts to purchase appropriate equipment for the day care, but these showings fall far short of establishing their compliance with the Human Services licensing rules. Because of the nature, severity and chronicity of the licensing violations, the revocation of Appellants' license is fully and thoroughly justified.

For that reason, it is the best use of the Commissioner's discretion not to ground the revocation of the Appellants' license on the added ground that Ms. Johnson affirmatively misled the Department. While it is true that the Department met the standard of proof in this context – it adduced reasonable cause to believe that Ms. Johnson misled investigators – it just met this standard. Reasonable cause exists where the facts appearing in the record would preclude the granting of a motion to dismiss by the license holder at the close of the evidence presented.<sup>80</sup>

Yet, the record regarding Ms. Johnson's claims about the number of children under care on February 22 are, it seems, more indicative of a general collapse of operations at the day care than they are of a knowing deception. Indeed, the County's licensing investigator Barbara Clifton expressed the concern that if an emergency, such as a fire, had occurred on the morning of February 22, Ms. Johnson might have forgotten entirely that an infant was on the lowest level of the building.<sup>81</sup> Such an assessment seems to point with greater strength to a lack of capability than it does to a craven lie.<sup>82</sup> Because the Department's deception claim is such a potent charge, and not conclusively established, and in this instance no way determinative of the outcome of the

---

<sup>80</sup> See, *LeBeau v. Buchanan*, 236 N.W.2d 789, 791 (Minn. 1975); compare also, *State v. Florence*, 239 N.W.2d 892, 903-904 (Minn. 1976).

<sup>81</sup> See, Testimony of Barbara Clifton.

<sup>82</sup> Compare, Minn. Stat. § 245A.07 (3) (2006).

case, the Commissioner should not ground the revocation of the Appellants' license upon this claim.

**E.L.L.**